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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/781,609

**Applicant(s)**

WEAVER, FARNI

**Examiner**

RANDY PEACHES

**Art Unit**

2617

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14 and 16-21 is/are allowed.
- 6) ☒ Claim(s) 1-13, 23 and 25-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. ***Claims 28-29 and 31*** are rejected under 35 U.S.C. 103(a) as being unpatentable over Jiang et al. (U.S. Patent Publication Number 2005/0096059 A1) in view of Chung Kam chung et al. (U.S. Patent Number 6,606,502 B1).

Regarding ***claims 28 and 31***, Jiang discloses a system for managing the delivery of electronic messages comprising:

- a network interface, Jiang discloses in paragraph [0035] whereby the method, system and portions thereof maybe implemented in different locations, such as the wireless unit, base station, base station controller, mobile switching center, etc. of which each, as one may know, contain the appropriate functional elements, network interface, processor and memory that will allow such a device to communicate over a network;
- receiving a delay query. Jiang et al. discloses in paragraph [0027] that a request is sent via a subscriber;
- determining whether an expected delay for delivery of the electronic message is less than a threshold delay. See Jiang et al. paragraph [0028, 0015, 0016]; and

- sending the electronic message only if the expected delay is less than the threshold delay.

However, Jiang et al. fails to clearly disclose wherein the delay query is sent with an electronic message and sending the said electronic message only if the expected delay is less than the threshold delay.

Chung Kam chung et al. discloses in column 10 lines 39-57 and column 11 lines 1-25 whereby the expected delay is less than a threshold delay, therefore transmitting the messages to the MC (see column 11 lines 21-25), which reads on claimed "message gateway". Chung Kam chung et al. also teaches in the ABSTRACT that an SMS message is sent to the MSC along with the querying of a delay information.

Therefore, at the time of the invention it would have been obvious to a person of ordinary skilled in the art to modify the combination of Jiang et al. (U.S. Publication Number 2005/0096059 A1) and Ament (U.S. Patent Publication Number 2004/0105436 A1) to further include Chung Kam chung et al. in order to be able to carry out a successful resource management by comparing the internal threshold delay with the actual threshold to effectively make a determination whether to complete the transmission of the said electronic message.

Regarding **claim 29**, as the combination of Jiang et al., Ament and Chung Kam chung et al. are made, the combination according to **claim 28**, Chung Kam chung et al. wherein the said delay estimator determines the expected delay based at least in part on the number of messages queued at a message gateway. See column 7 lines 42-67.

2. **Claims 1, 23, and 25-27** are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Jiang et al. (U.S. Patent Publication Number 2005/0096059 A1) in view of Ament (U.S. Patent Publication Number 2004/0105436 A1) and further in view of Chung Kam chung et al. (U.S. Patent Number 6,606,502 B1).

Regarding **claims 1 and 23**, Jiang et al. discloses a method for delivering electronic messages including a delay indicator, comprising:

- sending, from a subscriber/user, which reads on claimed "message sender," a service request for a delay report. Jiang et al. discloses in paragraph [0027] that a request is sent via a subscriber ;
- receiving a request for a delay report. See Jiang et al. paragraph [0028];
- determining an expected delay for delivery of an electronic message. See Jiang et al. paragraph [0028, 0015, 0016];
- sending a delay report to the subscriber/user, wherein the delay report includes information on the length of the expected delay. See paragraph [0033 and 0016]. The Examiner also is reminded by the Applicant that Jiang sends the delay messages **to** the subscriber/user. The Examiner would like to note that the Applicant is correct. The messages are sent to the subscriber. This is in direct accordance with the claimed language of the Applicant's invention. Jiang et al. further teaches that based on the delay report, determining, at the said subscriber/user, whether to send the said electronic message. The Examiner

would like to clarify for the Applicant that, as cited in claim 1, Jiang teaches in several paragraphs, preferably paragraph [0033] whereby the delay length that is transmitted to the subscriber after a request is received, details when the request is initiated, and a second instant which details when the service is available for the user. At which time the user is able to transmit the information.

However, Jiang et al. fails to clearly disclose which device is receiving the said request from the subscriber/user in order to determine the expected delay for the delivery of the said electronic message.

Ament teaches in paragraph [0020, 0034] of a resource manager (1), which reads on claimed "delay manager," which after receiving a request for a delay report, determines the expected delay for the delivery of the said electronic message. Once this step is completed, Ament further discloses in paragraph [0043] of an application (8), which uses the information from the said resource manager in the "use" phase (15). It is here in the use phase (15), as interpreted by the Examiner, that the messages are sent and processed according to the information received from the said resource manager (1). Ament further discloses that the function of the said resource manager (1) is to provide a resource counter, resource information, resource conflict (which is interpreted by the Examiner as delay), stipulate resources and resource use. See Ament paragraph [0022].

Therefore, at the time of the invention it would have been obvious to a person of ordinary skilled in the art to modify Jiang et al. (U.S. Publication Number 2005/0096059 A1) to include Ament (U.S. Patent Publication Number 2004/0105436 A1) in order to

provide a central device (resource manger) that determines the expected delay of an electronic message being requested to be transmitted by a said subscriber/user.

However, the combination of Jiang et al. and Ament fails to clearly disclose wherein based on the delay report received from the said resource manger, determining at the said subscriber/user whether the information presented is less than a predetermined threshold delay and if so, sending the said electronic message to a said application (8) only after determining that the expected delay is less than a threshold delay.

Chung Kam chung et al. discloses in column 10 lines 39-57 and column 11 lines 1-25 whereby the expected delay is less than a threshold delay, therefore transmitting the messages to the MC (see column 11 lines 21-25), which reads on claimed "message gateway".

Therefore, at the time of the invention it would have been obvious to a person of ordinary skilled in the art to modify the combination of Jiang et al. (U.S. Publication Number 2005/0096059 A1) and Ament (U.S. Patent Publication Number 2004/0105436 A1) to further include Chung Kam chung et al. in order to be able to carry out a successful resource management by comparing the internal threshold delay with the actual threshold to effectively make a determination whether to complete the transmission of the said electronic message.

Regarding **claim 2**, as the combination of Jiang et al., Ament and Chung Kam chung et al. are made, the combination according to **claim 1**, Jiang et al. continues to disclose wherein the request for a delay report is a delay query. See paragraph [0031].

Regarding **claim 3**, as the combination of Jiang et al., Ament and Chung Kam chung et al. are made, the combination according to **claim 1**, Jiang et al. disclose wherein the request for a delay report is a subscription request. Jiang et al. teaches in paragraph [0030] wherein a service request can be a request by a subscriber to gain access to a service.

Regarding **claim 4**, as the combination of Jiang et al., Ament and Chung Kam chung et al. are made, the combination according to **claim 1**, Jiang et al. discloses wherein determining the expected delay includes measuring an actual delay time for the delivery of a test message. See paragraphs [0016 and 0031].

Regarding **claim 5**, as the combination of Jiang et al., Ament and Chung Kam chung et al. are made, the combination according to **claim 1**, Jiang et al. discloses wherein the expected delay is determined at least in part from the number of messages (system load). See paragraphs [0016 and 0017].

Regarding **claims 6 and 27**, as the combination of Jiang et al., Ament and Chung Kam chung et al. are made, the combination according to **claims 5 and 14**, Chung Kam



chung et al. wherein the said MSC is a bulk message gateway. See column 9 lines 37-41.

Therefore, at the time of the invention it would have been obvious to a person of ordinary skilled in the art to modify the combination of Jiang et al. (U.S. Publication Number 2005/0096059 A1), Ament (U.S. Patent Publication Number 2004/0105436 A1) and Chung Kam chung et al. (U.S. Patent Publication Number 2004/0127176 A1) to further include Chung Kam chung et al. in order to provide a system which included a said application capable of handling a plurality of message (bulk).

Regarding **claim 7**, as the combination of Jiang et al., Ament and Chung Kam chung et al. are made, the combination according to **claim 1**, Jiang et al. discloses wherein the delay report sent to the said subscriber/user is one of a plurality of delay reports sent periodically to the sender. See paragraph [0016].

Regarding **claims 8 and 11**, as the combination of Jiang et al., Ament and Chung Kam chung et al. are made, the combination according to **claim 1**, Chung Kam chung et al. disclose wherein the expected delay has fallen below a threshold delay, wherein the delay report is sent in response to the determination that the expected delay has fallen below the threshold delay. See column 7 lines 59-67 and column 10 lines 36-65.

Regarding **claim 9**, as the combination of Jiang et al., Ament and Chung Kam chung et al. are made, the combination according to **claim 1**, Jiang et al. discloses wherein the

delay report is sent in response to a delay query from the said subscriber/user. See paragraph [0027].

Regarding **claim 10**, as the combination of Jiang et al., Ament and Chung Kam chung et al. are made, the combination according to **claim 1**, Jiang et al. discloses wherein the delay report includes the length of the expected delay. See paragraph [0016-0017].

Regarding **claim 12**, as the combination of Jiang et al., Ament and Chung Kam chung et al. are made, the combination according to **claim 1**, Chung Kam chung et al. discloses wherein the electronic message is a short message service message. See Column 5 lines 27-33.

Regarding **claim 13**, as the combination of Jiang et al., Ament and Chung Kam chung et al. are made, the combination according to **claim 1**, Chung Kam chung et al. discloses claim 1, wherein the delay report may be in different formats depending on the protocol, which can include session initiation protocol message. See column 7 lines 1-11.

Regarding **claim 25**, as the combination of Jiang et al., Ament and Chung Kam chung et al. are made, the combination according to **claim 23**, Chung Kam chung et al., further discloses wherein the

- report generator is operative to determine when the expected delay falls below a threshold delay. See column 7 lines 54-67; and
- the report generator is further operative to generate a delay report in response to the expected delay falling below the threshold delay. See column 7 lines 54-67.

Regarding **claim 26**, as the combination of Jiang et al., Ament and Chung Kam chung et al. are made, the combination according to **claim 23**, Chung Kam chung et al., further discloses wherein the delay estimator determines the expected delay based at least in part on the number of messages queued at a message gateway. See column 7 lines 42-67.

#### ***Allowable Subject Matter***

**Claims 14 and 16-21** allowed. Accordingly, the claim language includes the limitation "creating an electronic message only after determining that the expected delay is less than the threshold delay." The occurrence of creating a message is considered novel over the cited prior art.

#### ***Response to Arguments***

Applicant's arguments with respect to **claims 1-31** have been considered but are moot in view of the new ground(s) of rejection.

A.) The Applicant asserts that claims 28, 29, and 31 require the use of a "delay query" that includes "a threshold delay." See claim 28. But nowhere in the obviousness rejections of these claims is there any contention that the prior art discloses a "threshold

delay" that is included in a delay query. This claim element appears not to have been considered in the examination. Even though the only limitation in the body of claim 31, as examined, was that "the delay query includes the threshold delay," the rejection of claim 31 makes no mention of whether any alleged "delay query" includes a "threshold delay."

The Examiner would like to make mention that based on the premises that it was not definitely clear that a threshold delay, based on the information recited in the Applicant's specification (specifically page 10, lines 9-15), is actually "sent" or "set". Therefore, the Examiner has interpreted the claimed language based on what is stated in the Specification. The Examiner respectfully request clarification on what the Applicant's intentions are in respect to the information contained in the Specification.

B.) The Applicant asserts that the rejection does not discuss determining a delay for "Delivery of an Electronic Message".

The Examiner respectfully disagrees. According to the cited portion of Jiang, specifically paragraph [0027], Jiang clearly teaches,

[0027] The method also includes the step of receiving a service request (step 40). This service request may be received at any time—e.g., while delay information is being collected and/or when patterns are being determined. It should be noted that the service request might be initiated directly by a subscriber and/or user. In the alternative, however, this service request may be autonomously initiated at a predefined moment in time by the subscriber/user's equipment. This autonomous initiation may be periodic or aperiodic in nature.

It is clear that the cited prior art teaches that a determination process is performed to determine the delay of the sending of the electronic message. The Examiner maintains that Jiang teaches on this limitation.

C.) Regarding **claims 23 and 25-27**, the Applicants argument is persuasive and claim 23 is thereby allowed base premise that the cited prior art fails to render sufficient support as to a *"subscriber data storage that identifies message senders that subscribe to receive delay reports."*

D.) The Applicant argues that that claim 1 does not recite that the message is transmitted or sent just anywhere after the delay is sufficiently low; claim 1 recites that the message is sent "to the message gateway" if the delay is sufficiently low. The Office Action does not identify where, if at all, the prior art discloses that a message could be sent "to the message gateway" only after the delay is sufficiently determined to be sufficiently low.

The Examiner respectfully disagrees. According to the above office action, Chung Kam chung et al. discloses in column 10 lines 39-57 and column 11 lines 1-25 whereby the expected delay is less than a threshold delay, therefore transmitting the messages to the MC (see column 11 lines 21-25), which reads on claimed "message gateway". Therefore, the Examiner maintains that the cited prior art teaches on such limitation.

E.) The Applicant argues that that interpretation of the cited prior art is in error. These two interpretations of Chung Kam Chung are mutually contradictory. In claims 1

and 8, a "message" is sent from a user and a "delay report" is sent to a user, but the same feature of Chung Kam Chung is alleged to disclose both of these limitations.

The Examiner would like to clarify that according to claim 1, Jiang teaches of the subscriber sending a message requesting a delay report, i.e. "sending, from a subscriber/user, which reads on claimed "message sender," a service request for a delay report. Jiang et al. discloses in paragraph [0027] that a request is sent via a subscriber". However, Chung Kam Chung is used to indicate that a delay report is sent from the network indicating the delay. Therefore, the meaning of each is mutually exclusive and thus meets the claim limitation taught by the Applicant.

F.) Ament reference does not disclose a "message gateway"

The Examiner contends that the Applicant's argument in regards to this limitation is persuasive; however, after further consideration of the cited prior art and their combinations, the Examiner has determined that the Chung Kam Chung teaches of the said message gateway and therefore the claim language is rejected.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RANDY PEACHES whose telephone number is (571) 272-7914. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on (571) 272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Randy Peaches/  
Examiner, Art Unit 2617

/Charles N. Appiah/  
Supervisory Patent Examiner, Art Unit 2617